

Marine Transportation Security Clearance Program

Guidance Material – Designated position tool for determining TSC requirement

503. Every person shall be a holder of a security clearance if they

- (a) require access to a restricted area two and cannot enter the area under any of paragraphs 380(1)(b) to (f) or subsection 380(2) or (3);
- (b) are a licensed ship's pilot;
- (c) are a harbour master or wharfinger appointed under subsection 69(1) of the *Canada Marine Act*;
- (d) have security responsibilities, including authorized screening and security guard functions;
- (e) take applications for security clearances and the applicants' fingerprints and facial images, which functions are performed on behalf of the Minister and for the purposes of this Part;
- (f) have access to a cruise ship that is interfacing with a restricted area two to provide services, supplies or equipment to the cruise ship or a member of the complement of the cruise ship;
- (g) could cause the failure of a preventive measure, delay the response to a security incident or adversely affect the recovery from a security incident as a result of being assigned or performing any of the following duties, responsibilities or functions:
 - i. access to security information at the marine facility or port,
 - ii. the supervision of marine facility operations,
 - iii. the creation, alteration, control or maintenance of cargo documentation or crew or passenger lists by a person who
 - A. is present at the marine facility or port, or
 - B. has advance access to the documentation or lists, or
 - iv. the planning or directing of the movement of cargo or containers at a container terminal, including their loading and unloading into and from vessels; or
- (h) are a seafarer who has submitted an application for a Seafarer's Identification Document.

329. (4) The following areas shall be established as restricted area two:

- (a) areas in the marine facilities set out in Part 1 of Schedule 1 that contain the central controls for security and surveillance equipment and systems and areas that contain the central lighting system controls; and
- (b) areas that are designated for the loading or unloading of cargo and ships' stores at the cruise ship terminals set out in Part 1 of Schedule 1 and land areas adjacent to vessels interfacing with those cruise ship terminals.

Marine Transportation Security Clearance Program

Guidance Material – Designated position tool for determining TSC requirement

1 Purpose

The tool is provided as a means to determine whether or not a specific individual position requires a transportation security clearance (TSC) with respect to the marine environment based on the functions assigned to the position.

2 Methodology

The designated position tool was developed utilizing all the specific functions identified through process mapping, which was conducted nationally at all Phase I ports. Furthermore, these functions were harmonized with current Marine Transportation Security Regulations (MTSR) to determine applicability.

The tool in its current form is sufficiently generic that it can be applied consistently on a national basis.

3 Application

In accordance with MTSRs, the following positions are designated as requiring a TSC. These positions are not subject to the designated position tool:

- a licensed ship pilot;
- a harbour master or wharfinger appointed under sub-section 69(1) of the Canada Marine Act and;
- a seafarer who has submitted an application for a Seafarer's Identification Document.

The designated position tool is to be employed for every position not identified above, to determine if that position requires a TSC. The application of the tool encompasses both positions employed at a port/facility as well as position/personnel who have direct interaction with a port/facility in the conduct of their business or support to that port/facility.

4 Utilization

The tool is intended to be used in a consistent and transparent manner, based on functions identified to be performing duties likely requiring a TSC. We recommend that facility operators apply the tool with union representatives present, as well as a minimum of one individual who perform these duties. This will ensure that the agreed upon duties have been identified.

Once the position has been designated for that facility, the Employers Association will work with the facility, labour and CPA to identify individuals who perform those duties and notify them of the requirement to obtain a TSC. The individual simply has to follow the instruction stated in the "Guidance Material - Roles and Responsibilities - Application Process", as amended from time to time, to submit his application.

5 Resolution

In the application of the tool, if a dispute with regard to the tool's output should arise, your Transport Canada Regional office shall be consulted.

Marine Transportation Security Clearance Program

Guidance Material – Designated position tool for determining TSC requirement

Through both consultation with the port/facility, the representative responsible for the position in question and Transport Canada, a determination will be made to resolve the dispute. In all cases Transport Canada will be the final decision authority in such matters.

6 Definitions

Control of documentation: means the physical handling or possession or access to said documentation in written or electronic form.

Advanced access: means the receipt, ahead of time, of cargo documentation, passenger or crew lists during it's creation, modification, adjustment, possession or handling. This includes having knowledge of the information listed in whole or in part.

Security systems maintenance: means the inspection, overhaul, repair, preservation and the replacement of parts, including preventive maintenance of security systems such as CCTV systems, command and control systems, biometrics etc., and the resources that support these systems such as IT, telephone lines, fiber optics or power.

Physical security maintenance: means the inspection, overhaul, repair, preservation and the replacement of parts, including preventive maintenance of physical security hardware such as locking mechanisms, barriers, fencing, grills and etc.

7 Unique Items

The following section outlines the application of the tool and processes to follow for unique situations:

Tugs and Barges

Operational Requirement – Persons that have access to a cruise ship that is interfacing with a restricted area two provide services, supplies or equipment. Essentially this applies to cruise ship facilities at selected ports.

Access – Accessing a cruise ship for the purposes of tugs and barges is defined as coming into direct contact or “touching” the vessel while it is interfacing the facility. This may include:

- Garbage scows
- Barges
- Tractor tugs
- Conventional tugs

Transportation Security Clearance Requirement – As a result of the above, a transportation security clearance (TSC) will be required for:

- Barge crew, where the barge is in contact with the vessel during the interface with the facility

Marine Transportation Security Clearance Program

Guidance Material – Designated position tool for determining TSC requirement

- Tug crew, where a tug is employed to keep a barge in place its provision of service to the vessel.

This does not include:

- Tug crew that are only slipping lines on cruise vessel cleats
- Tug crew involved in the positioning of cruise vessels prior to the securing of lines
- Tug crew that are required to provide emergency services for the protection of life or property

CN Rail

Operational Issue: - Should CN Rail employees have a security clearance if they have responsibilities for opening and closing the gate at a marine facility to allow access by the train to the marine facility?

Clarification– Under the regulations, the operator of a marine facility is responsible for implementing their security plan including access control. Section 503 (d) refers to persons with security responsibilities, therefore, the person that is conducting access control security responsibilities at a marine facility should have a security clearance and this is the responsibility of the operator of that facility as part of their security plan.

Operational Issue: - Should CN Rail employees who have advance access to dangerous goods list have a security clearance?

Clarification– It was not the intent of section 503 (g) (iii) (A) (B) to extend to the supply chain. The ship agents, yard planners and ship planners have advance access to information regarding cargo arriving at the marine facility when it will be loaded on the vessel. The MTSR and s.503 is not intended to be applied to the supply chain beyond the marine component. However if the port has delegated security duties to anyone (including CN), then that group/person/function will require a TSC and essentially the onus is on the Port to either speak to CN regarding this requirement (which would continue to facilitate access for CN crews) or reassign this responsibility to someone else within the marine facility who will obtain a TSC.

Shipping Agents

1. Operational Issue: A TSC is required for any person holding a position at a Shipping Line or Agency in Canada that meets the following criteria: access to cargo documentation, passenger lists or crew lists prior to attending the facility.

Clarification - Although an individual attending the marine facility may have access to cargo documentation, passenger lists or crew lists, that access is mitigated by the chapeau clause of the regulations in s. 503 (g), which states:

- (g) *could cause the failure of a preventive measure, delay the response to a security incident or adversely affect the recovery from a security incident as a result of being assigned or performing any of the following duties or responsibilities or functions:*

Marine Transportation Security Clearance Program

Guidance Material – Designated position tool for determining TSC requirement

- i. *access to security information at the marine facility or port*
- ii. *the supervision of marine facility operations*
- iii. *the creation, alteration, control or maintenance of cargo documentation or crew or passenger lists*

Essentially a person in possession of the cargo documentation could not inflict either economic damage or the loss of life or injury simply by having access to that information. Within each terminal's internal processes, applicable mitigating factors are also in place.

2. Operational Issue: Supervisors who oversee individuals, who require a TSC, must also obtain a TSC.

Clarification - The requirement for the immediate supervisor to have a clearance does not extend beyond immediate supervision of those employees who are able to create or change documentation. The intent of the regulations is to capture a supervisor who has “**direct**” influence over someone performing a function that requires a TSC. That direct influence could pose a security threat because of the manipulative capabilities of a direct supervisor. A second layer supervisor would not require a TSC since the first layer supervisor is not performing a function that requires a TSC (they require a TSC based on the function being performed by the clerk). The second layer supervisor would require a TSC if, based on the functions they performed, require a TSC. As an example, if the individual had the ability to manipulate cargo information, then this individual must obtain a TSC.

3. Operational Issue: Export manifests – would personnel responsible for manipulating the cargo documentation for exports required to obtain a TSC?

Clarification - The regulations are concerned in protecting international supply chain and trading partners and as a result Transport Canada is looking into various aspects of reciprocity of regulations with our international partners in the future. However, it should be noted that the security impacts, domestically, of export shipping are considered lower than the impacts of import shipping. Moreover the current regulations are intended to address direct impacts to the marine transportation regime and does not extend to other modes in the supply chain. As such, individuals whose sole function/responsibility is for manipulating cargo documentation of containers destined for overseas, will not be impacted and will not require a TSC in the immediate term. However each situation should be reviewed on a case-by-case basis, to ensure that the person responsible for export manifests does not perform a dual function to include domestic cargo.